BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of HAWAII ELECTRIC LIGHT COMPANY, INC. For Approval of a Power Purchase Agreement for Renewable Dispatchable Firm Energy and Capacity.	)	DOCKET NO. 2017-0122

ORDER NO. 37205

DENYING HAWAII ELECTRIC LIGHT COMPANY, INC.'S REQUEST
FOR A WAIVER AND DISMISSING LETTER REQUEST FOR APPROVAL
OF AMENDED AND RESTATED POWER PURCHASE AGREEMENT

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DENYING HAWAII ELECTRIC LIGHT COMPANY, INC.'S REQUEST FOR A WAIVER AND DISMISSING LETTER REQUEST FOR APPROVAL OF AMENDED AND RESTATED POWER PURCHASE AGREEMENT

By this Decision and Order,[1] the Public Utilities Commission ("Commission"), denies HELCO's request for a waiver from the Competitive Bidding Framework for the Amended and Restated Power Purchase Agreement dated May 5, 2017 ("Amended PPA")[2] between

[1]The Parties to this docket are HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), HU HONUA BIOENERGY, LLC ("Hu Honua") (collectively, HELCO and Hu Honua are referred to as "Applicants"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). The Commission has also granted Participant status to LIFE OF THE LAND ("LOL"), TAWHIRI POWER, LLC ("Tawhiri"), and HAMAKUA ENERGY, LLC ("Hamakua"). See Order No. 34554, "Opening a Docket to Review and Adjudicate Hawaii Electric Light Company, Inc.'s Letter Request for Approval of Amended and Restated Power Purchase Agreement, Filed in Docket No. 2012-0212 on May 9, 2017," filed May 17, 2017 ("Order No. 34554").

[2]"Hawaii Electric Light Company, Inc.'s Amended and Restated Power Purchase Agreement dated May 5, 2017," filed May 9, 2017. HELCO submitted the Amended PPA as "Exhibit A" to a written letter

HELCO and Hu Honua to purchase energy and capacity from Hu Honua's biomass facility on Hawaii island (the "Hu Honua Project"). As discussed in this Order, HELCO has not demonstrated that a waiver from the competitive bidding framework is necessary or justified. HELCO's recent competitive solicitations have been successful in procuring multiple large-scale renewable energy projects cost-effectively, such that HELCO's requested waiver is not in the public interest. As a result, the Commission dismisses without prejudice HELCO's Letter Request, filed May 9, 2017, in Docket No. 2012-0212,[3] for approval of the Amended PPA and does not address the remaining issues in this proceeding, as moot.

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request to the Commission, filed May 9, 2017. The cover letter shall be referred to herein as "HELCO Letter Request," and the Amended PPA attached as Exhibit A shall be referred to as the "Amended PPA."

[3]Pursuant to Order No. 34556, "Transferring Request for Approval of Amended and Restated Power Purchase Agreement from Docket No. 2012-0212 to Docket No. 2017-0122," filed May 18, 2017, in Docket No. 2012-0212 ("Order No. 34556"), HELCO's Letter Request was transferred to this docket.

I.

BACKGROUND

A.

Docket No. 2008-0143 (Waiver Docket)

On July 16, 2008, HELCO and its parent company, Hawaiian Electric Company, Inc. ("HECO"), submitted an application seeking a waiver from the Commission's Competitive Bidding Framework[4] for a proposed project to be built by Hu Honua.[5] Specifically, Hu Honua proposed building a biomass energy project in Pepeekeo on Hawaii Island.[6] In relevant part, HECO and HELCO argued in the Waiver Application that HELCO did not have any on-going or planned renewable energy requests for proposals ("RFP") at the time, and that "a waiver [would] be in the public interest as it would allow discussions to continue on the provision of ancillary services that could assist the utility grid's operations."[7]

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[4]See In re Public Util. Comm'n, Docket No. 03-0372, Decision and Order No. 23121, filed December 8, 2006, Exhibit A ("Competitive Bidding Framework" or "Framework").

[5]See In re Haw. Elec. Co. Inc., Docket No. 2008-0143, "Application; Exhibits A & B; and Certificate of Service," filed July 16, 2008 ("Waiver Application").

[6]Waiver Application, Exhibit A at 1.

[7]Docket No. 2008-0143, Decision and Order, filed November 14, 2008 ("Waiver D&O") at 2 (citing Waiver Application at 3).

On November 14, 2008, the Commission issued its Waiver D&O granting HECO and HELCO's request for a waiver from the Competitive Bidding Framework for the Hu Honua Project, finding that "a waiver for the Hu Honua Project is in the public interest because 'it could provide an opportunity to increase the amount of renewable energy on HELCO's system, without increasing the amount of as-available, intermittent renewable energy resources on HELCO's system.'"[8] However, the Commission cautioned that it was "not approving the Hu Honua Project per se[,]" and that any subsequent power purchase agreement ("PPA") between HELCO and Hu Honua related to the Project would be reviewed separately by the Commission.[9]

B.

Docket No. 2012-0212 (Original PPA Docket)

On August 30, 2012, pursuant to the waiver granted in Docket No. 2008-0143, HELCO submitted an application seeking Commission approval of a PPA with Hu Honua for firm, dispatchable energy from the Hu Honua Project.[10]

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[8]Waiver D&O at 7.

[9]Waiver D&O at 7.

[10]In re Haw. Elec. Light Co., Inc., Docket No. 2012-0212, "HELCO Application; Verification; Exhibits 1-11; and Certificate of Service," filed August 30, 2012 ("Original PPA Application").

On October 24, 2012, the Commission issued Order No. 30739 which, in relevant part, granted Participant status to Tawhiri, Hamakua, and LOL.[11] In denying Tawhiri's, Hamakua's, and LOL's requests for Intervenor status, the Commission found that the limited interests asserted by each of them in their motions to intervene did not support granting Intervenor status, but did support Participant status as to Issue No. 6 of the Commission's established statement of issues; i.e., whether the Original PPA between HELCO and Hu Honua was prudent and in the public interest.[12]

On December 30, 2013, the Commission approved the Original PPA for the Hu Honua Project.[13]

On January 28, 2016, the Commission issued Order No. 33516 in Docket No. 2012-0212, instructing HELCO to file a status report regarding the progress of the Hu Honua Project.[14] The Commission observed "that the latest Commercial Operations

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[11]Docket No. 2012-0212, Order No. 30739, "Denying Motions to Intervene Filed by Tawhiri Power, LLC, Hamakua Energy Partners, L.P., Preserve Pepeekeo Health and Environment, and Life of the Land; Granting Participant Status to Tawhiri Power, LLC, Hamakua Energy Partners, L.P., and Life of the Land; and Other Initial Matters," filed October 24, 2012 ("Order No. 30739").

[12]See Order No. 30739 at 14-16 and 19-23.

[13]Docket No. 2012-0212, Decision and Order No. 31758, filed December 20, 2013 ("Original PPA D&O").

[14]Docket No. 2012-0212, Order No. 33516, "Instructing Hawaii Electric Light Company, Inc. to File a Status Report and Permitting Reply Comments," filed January 28, 2016 ("Order No. 33516").

Date ('COD') for the project was December, 2015, and that the project appears to have been significantly delayed with no apparent COD in the near-term future."[15] Consequently, the Commission indicated its "concern[] with the continued efficacy of this project, particularly in light of the significant lapse in time between when the original application was filed and the now lapsed COD."[16]

On February 16, 2016, HELCO submitted a status report on the Hu Honua Project, pursuant to Order No. 33516.[17] In its Status Report, HELCO clarified that: (1) Hu Honua had failed to meet two "Guaranteed Milestones" under the Original PPA;[18] (2) Hu Honua's failure to meet the subject Guaranteed Milestones constituted a material breach and default under the Original PPA; (3) HELCO had declared an Event of Default under the terms of the Original PPA; and (4) "[b]ased on information provided by [Hu Honua], [Hu Honua]

[15]Order No. 33516 at 1.

[16]Order No. 33516 at 1-2.

[17]Letter From: J. Viola To: Commission Re: Docket No. 2012-0212 – Application of Hawaii Electric Light Company, Inc. For Approval of a Power Purchase Agreement for Renewable Dispatchable Firm Energy and Capacity – Status Report per Order No. 33516," filed February 16, 2016 ("HELCO Status Report").

[18]According to HELCO's Status Report, Hu Honua's failure to meet the Guaranteed Milestones were the result of litigation with its general contractor and loss of Project financing in 2014. See HELCO Status Report at 6-7 and 9.

has no ability to cure the Event of Default or achieve commercial operations in the near future."[19] As a result, HELCO informed the Commission that, "[a]bsent compelling changes in circumstances," it intended to terminate the Original PPA with Hu Honua effective March 1, 2016.[20]

On March 4, 2016, HELCO filed a letter notifying the Commission that it had terminated the Original PPA with Hu Honua.[21] Hu Honua subsequently filed a request for Commission action on HELCO's decision to terminate the Original PPA.[22] In response, on June 9, 2016, the Commission issued information requests ("IRs") to HELCO and Hu Honua.

On September 8, 2016, the Commission dismissed Hu Honua's Request for Commission Action, finding that the PPA termination and underlying bases were governed by the express terms of the Original PPA and were not appropriate for resolution by the

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[19]HELCO Status Report at 1.

[20]HELCO Status Report at 2.

[21]Docket No. 2012-0212, Letter From: J. Viola To: Commission Re: Docket No. 2012-0212 - Application of Hawaii Electric Light Company, Inc., for Approval of a Power Purchase Agreement ("PPA") with Hu Honua Bioenergy, LLC; Notice of Event of Default and Termination, filed March 4, 2016 ("HELCO Termination Letter").

[22]"Hu Honua Bioenergy, LLC's Request for Commission Action; Affidavit of Harold Robinson; Exhibits '1' and '2'; and Certificate of Service," filed May 19, 2016 ("Hu Honua Request for Commission Action").

Commission.[23] However, the Commission observed that HELCO had indicated that it was open to continuing negotiations with Hu Honua to see if they "[could] mutually agree upon a proposal that will enable the [P]roject to move forward for Commission review and approval."[24]

On May 9, 2017, HELCO submitted its Letter Request seeking Commission approval of the Amended PPA in Docket No. 2012-0212.[25] On May 18, 2017, the Commission issued Order No. 34556, which transferred HELCO's Letter Request and Amended PPA from Docket No. 2012-0212 to Docket No. 2017-0122.

C.

Relevant Procedural History

On May 17, 2017, the Commission issued Order No. 34554, which opened Docket No. 2017-0122 for the purpose of receiving, reviewing, and adjudicating HELCO's May 9, 2017 letter request for

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[23]Order No. 33901, "Dismissing Hu Honua Bioenergy, LLC's Request for Commission Action," filed September 8, 2016 ("Order No. 33901").

[24]Order No. 33901 at 9 (citation omitted).

[25]On December 1, 2016, Hu Honua filed a federal civil action against HELCO. The Amended PPA is apparently a result of the Parties' settlement discussions in the Hu Honua lawsuit. According to HELCO, on June 20, 2017, the Parties reached a settlement agreement in Hu Honua's lawsuit against HELCO, which required the Parties to submit the Amended PPA to the Commission for review and approval. HELCO Letter Request at 4.

the Amended PPA (as noted above, the next day, May 18, 2017, the Commission issued Order No. 34556, which transferred HELCO's May 8, 2017 letter request from Docket No. 2012-0212 to this docket).

In so doing, the Commission noted that transferring HELCO's Letter Request out of Docket No. 2012-0212 into this new docket was "consistent with past [C]ommission rulings involving similar situations, whereby an applicant's new or modified request for relief was essentially beyond the scope of the original application."[26] In support, the Commission expressly identified a number of considerations, including, in relevant part:

> Second, HELCO presumes that the waiver granted by the [C]ommission in Docket No. 2008-0143, is transferred to and now applies to the [Amended] PPA. If its presumption is incorrect, HELCO, in the alternative, requests that the [C]ommission grant a new waiver for the [Amended] PPA. [citation omitted].
>
> HELCO's presumption ignores the conditions placed upon the waiver granted in Docket No. 2008-0143. Specifically, the [C]ommission conditioned the previous waiver on HELCO's (1) filing of a fully executed term sheet within four months of the date of the Decision and Order (i.e., November 14, 2008), and (2) demonstration of evidence that the price paid by HELCO to Hu Honua was fair and in the best interest of the ratepayer.
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> Because the timing and pricing structure of the [Amended] PPA makes compliance with these

[26]Order No. 34554 at 5.

> conditions impossible, the [C]ommission concludes that HELCO's presumption is incorrect.[27]

Moreover, noting that "circumstances on the island of Hawaii have changed since the [C]ommission initially granted the waiver on November 14, 2008, in Docket No. 2008-0143[,]"[28] the Commission expressly "identifie[d] HELCO's alternative request for a new waiver as an issue for adjudication in this proceeding."[29]

In addition, in Order No. 34554, the Commission, on its own motion, named Hu Honua as a party to this proceeding.[30] Order No. 34554 also granted Participant status to Tawhiri, Hamakua, and LOL[31] (the Commission ruled that Tawhiri, Hamakua, and LOL's scope of participation included whether the Amended PPA was prudent and in the public interest; LOL was also granted permission to participant on the additional sub-issue of whether

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[27]Order No. 34554 at 6-7.

[28]Order No. 34554 at 7. See also, id. at 7-9 (listing specific examples of changed circumstances on the island of Hawaii).

[29]Order No. 34554 at 9. See also, id. at 10 (statement of issues to govern this proceeding on remand).

[30]Order No. 34554 at 11.

[31]Order No. 34554 at 13.

the energy price components in the Amended PPA properly reflect the cost of biomass fuel supply).[32]

On May 30, 2019, in response to Order No. 34554, HELCO submitted a "Memorandum in Support" of its request for a waiver from the Competitive Bidding Framework for the Hu Honua Project.[33] Briefly, HELCO asserted the following considerations in support of its waiver request under the Competitive Bidding Framework:

> 1. **Part II.A.3.b.(iv) of the Framework** – as competitive bidding under the current circumstances will impede achievement of the government objectives and policies set forth in HRS §§ 269-27.2 and 269-27.3 and the RPS law.
>
> 2. **Part II.A.3.b[.](iii) of the Framework** - as competitive bidding under the current circumstances could result in the less efficient procurement of more expensive biomass generation (due to the expiration of the [federal] Investment Tax Credit ("ITC")[)].
>
> 3. **Part II.A.3.c.(iii) of the Framework** – as the Hu Honua project will help meet the government objectives and policies set forth in HRS §§ 269-27.2 and 269-27.3 and the RPS law.
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> 4. **Part II.A.3.d of the Framework** – as a waiver for the Hu Honua project is in the public interest because the Hu Honua project

[32]Order No. 34597, "Establishing a Procedural Schedule, Statement of Issues, and Scope of Participation for Participants," filed June 6, 2017.

[33]"Hawaii Electric Light Company, Inc.'s Memorandum in Support of Request to Waive Framework for Competitive Bidding; Attachment A; and Certificate of Service," filed May 30, 2017 ("HELCO Waiver Memo").

currently presents the most expeditious means to increase the amount of renewable energy on [HELCO’s] system without increasing the amount of as-available, intermittent renewable energy resources on [HELCO’s] system. Further, the project will provide capacity and ancillary services necessary to support the reliability of a system with an existing high penetration of renewable intermittent resources.

***Note:** This is the basis under which the Commission originally granted the project a waiver from the Competitive Bidding Framework.

5. **Part II.A.3.d. of the Framework** – under current circumstances, a waiver is in the public interest as: (a) the project will likely result in an increase in the reliable supply of renewable firm dispatchable electricity to customers, (b) if completed on schedule by the end of 2018, the project will be able to take advantage of the federal ITC for renewable energy (in lieu of a Production Tax Credit), (c) the renewable generation from the Hu Honua project, if completed on schedule, will be available much sooner than if the project was put out for bid via a competitive solicitation, (d) the project is anticipated to provide community benefits including economic stimulation, employment creation (through direct jobs at the Hu Honua facility and indirect forestry, harvesting, and hauling jobs), promotion of long-term local agriculture industry, and increases in energy security, (e) the price remains delinked from the price of fossil fuel generated electricity; and (f) the addition of Hu Honua would enable the Company to expedite retirement of fossil-fuel plants.[34]

On July 28, 2017, the Commission issued Decision and Order No. 34726, which approved the Amended PPA

[34]HELCO Waiver Memo at 3-4.

("Amended PPA D&O"). In pertinent part, the Commission granted HELCO's request for a waiver from the Competitive Bidding Framework for the Hu Honua Project, finding that: (1) the opportunity to increase the amount of renewable energy on HELCO's system without increasing the amount of as-available intermittent renewable energy is in the public interest; and (2) the Hu Honua Project appears to provide "the most viable opportunity to add firm, dispatchable, renewable generation in the near term, and requiring the Project to enter the next round of competitive bidding would very likely forgo the opportunity to utilize the federal ITC benefits."[35]

Additionally, in approving the Amended PPA, the Commission "note[d] that this proceeding to review the [Amended] PPA was triggered by Hu Honua missing major construction milestones established in the Original PPA[,]" and set forth its expectation that "Hu Honua and HELCO [will] make all reasonable attempts to complete the project according to this schedule and does not expect future requests to extend the Commercial Operations Date deadline."[36]

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[35]Amended PPA D&O at 30 and 31.

[36]Amended PPA D&O at 61.

Participant LOL filed an appeal of the Amended PPA D&O and, on May 10, 2019, following briefing and oral argument, the Hawaii Supreme Court vacated the Amended PPA D&O and remanded the matter to the Commission.[37] In particular, the Court held that the Commission had not "explicitly considered the reduction of GHG emissions in approving the Amended PPA, as required by statute, and that the [Commission] denied LOL due process with respect to the opportunity to be heard regarding the impacts that the Amended PPA would have on LOL's right to a clean and healthful environment."[38]

On June 20, 2019, pursuant to the Supreme Court's decision, the Commission issued Order No. 36382, which re-opened this docket for further proceedings to review the Amended PPA.[39] In so doing, the Commission established that all issues would be re-examined, in addition to a new, fourth issue, which would expressly consider the impact of greenhouse gas ("GHG") emissions associated with the Amended PPA and the Hu Honua Project.[40]

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[37] See In the Matter of Haw. Elec. Light Co., Inc., 145 Hawaii 1, 445 P.3d 673 (2019).

[38] In re Haw. Elec. Light, 145 Hawaii at 5, 445 P.3d at 677.

[39] Order No. 36382, "Reopening Docket," June 20, 2019 ("Order No. 36382").

[40] See Order No. 36382 at 9 and 14. See also, Order No. 36539, "Adopting a Procedural Order," filed September 5, 2019 ("Order No. 36539"), at 3-4.

The Commission also expanded the Participants' scope of participation such that they could comment on all issues established for the re-opened proceeding.[41]

Order No. 36382 also provided the Parties and Participants with an opportunity to submit supplemental briefing on the initial issues (i.e., issue nos. 1-3, including the waiver issue) "taking into consideration events that have occurred in Hawaii Island's energy market and developments on HELCO's system since the [C]ommission issued [the Amended PPA D&O] . . . ."[42]

Subsequently, the Commission issued Order No. 36539, which, in relevant part, established a procedural schedule which provided for an opportunity for Parties and Participants to submit: (1) IRs regarding each other's supplemental briefing; (2) pre-hearing testimony on all issues; and (3) IRs and Supplemental IRs ("SIR") regarding each other's pre-hearing testimony. Deadlines regarding an evidentiary hearing and related procedural events were deferred to be scheduled at a later date.[43]

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[41]Order No. 36382 at 13.

[42]Order No. 36382 at 4.

[43]Order No. 36539, "Adopting a Procedural Schedule," filed September 25, 2019 ("Order No. 36539"), at 5-7.

All of the above-described pre-hearing submissions have been completed.[44] At this juncture, prior to proceeding, the Commission finds it reasonable to evaluate the record and determine the most prudent and efficient means forward. In this regard, on May 8, 2020, Hu Honua submitted a letter to the Commission requesting a scheduling conference to discuss the evidentiary hearing and related procedural steps.[45] On May 22, 2020, the Commission filed its response, in which it acknowledged Hu Honua's May 8, 2020 letter, but explained that recent major developments warranted consideration and reflection as to how best to proceed.[46]

Specifically, the Commission noted that Final Award Selection for the second phase of the Hawaiian Electric Companies'[47] (including HELCO) competitive RFP had been completed

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[44]Due to some discovery disputes, the deadlines for the above procedural steps were extended several times. See Order No. 36908, "Granting in Part and Denying in Part Life of the Land's Second Motion to Compel and Motion for Clarification and Enlargement of Time," filed December 20, 2019.

[45]Letter From: W. Yamamoto To: Commission Re: Docket No. 2017-0122: Scheduling Conference Request, filed May 8, 2020.

[46]Letter From: Commission To: W. Yamamoto Re: Docket No. 2017-0122 In re: Hawaii Electric Light Company, Inc. ('HELCO'), Application for Approval of a Power Purchase Agreement for Renewable Dispatchable Firm Energy and Capacity, filed May 22, 2020 ("Commission Response").

[47]The "Hawaiian Electric Companies" refers to HELCO, HECO, and Maui Electric Company, Limited.

in Docket No. 2017-0352, resulting in "'the largest renewable energy procurement ever undertaken in Hawaii,' which has the potential to 'produce 460[MW] of solar energy and nearly 3[GW] hours of energy storage on [those islands].'"[48] Additionally, the Commission noted the emergency situation currently facing Hawaii as a result of the State's response to the COVID-19 virus, including the drastic impacts to Hawaii's economy.[49]

II.

DISCUSSION

A.

HELCO Has Not Met Its Burden To Justify A Waiver From The Competitive Bidding Framework For The Hu Honua Project

Based on review of the record, and taking the surrounding history and circumstances of this docket into account, the Commission finds and concludes that HELCO has not met its burden to support its request for a waiver for the Hu Honua Project. Accordingly, the Commission resolves Issue No. 1, i.e., "Whether HELCO has met its burden of proof in support of its request to waive Hu Honua's Project from the [C]ommission's Framework for Competitive Bidding," in the negative and dismisses

[48]Commission Response at 1.

[49]Commission Response at 1-2.

the Amended PPA on this basis. The Commission's reasoning is discussed below.

1.

Applicants' Position

In its post-remand briefing, Applicants rely on the following principal arguments:

1. Requiring the Hu Honua Project to go through competitive bidding under the circumstances would impede the government objectives and policies set forth in HRS §§ 269-27.2 and 269-27.3 and the RPS law (HRS §§ 269-91, et. seq.).

2. Requiring the Hu Honua Project to go through competitive bidding under the current circumstances could result in less efficient procurement of more expensive biomass generation due to the expiration of the federal ITC, which Hu Honua anticipated receiving.

3. The Hu Honua Project will help meet the State's objectives and policies set forth in HRS §§ 269-27.2 and 269-27.3 and the RPS law.

4. Granting a waiver for the Hu Honua Project is in the public interest because the Project offers the most expeditious means to increase renewable energy on HELCO's system without increasing as-available, intermittent renewable energy, as well as provides capacity and ancillary services to support system

reliability in the face of high penetration of renewable intermittent resources.

5. Granting a waiver for the Hu Honua Project is in the public interest because: (a) the Project will likely increase the reliable supply of renewable firm dispatchable electricity to customers; (b) if completed on schedule, the Project will able to take advantage of the federal ITC; (c) the renewable generation from the Project, if completed on schedule, will be available much sooner than if the Project were put out for competitive bid; (d) the Project is anticipated to provide community benefits such as economic stimulation, employment creation, promotion of long-term agricultural industry, and increases in energy security; (e) the Amended PPA pricing is de-linked from the price of fossil fuels; and (f) the addition of the Project will allow HELCO to expedite retirement of fossil fuel plants.[50]

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[50]HELCO Waiver Memo at 3-4. See also, "Hawaii Electric Light Company, Inc.'s Supplemental Brief; Attachments 1-2; and Certificate of Service," filed September 17, 2019 ("HELCO Supplemental Brief"), at 2-3 (stating that HELCO's position on Issues Nos. 1-3, post-remand, "remain the same as previously filed on the record before in this docket[,]" and that "as to Issue No. 1, [HELCO] refers to its [Waiver Memo], filed herein on May 30, 2017, and the record herein."); and Letter From: K. Katsura To: Commission Re: Docket No. 2017-0122, Hawaii Electric Light Company, Inc.; Amended and Restated PPA with Hu Honua Bioenergy, LLC; Hawaii Electric Light Company, Inc.'s Prehearing Testimonies and Exhibits, filed January 28, 2020 ("HELCO Prehearing Testimonies"), HELCO T-1 at 23-27.

2.

Recent Developments

Upon reviewing the record and considering recent developments, the Commission is not persuaded that these considerations sufficiently justify a waiver from the Competitive Bidding Framework. In particular, the Commission takes note of the following recent developments.

On December 31, 2018, as a result of the RFP process in Docket No. 2017-0352, the Hawaiian Electric Companies submitted applications requesting Commission approval for seven PPAs for grid-scale, solar-plus-storage projects on the islands of Oahu, Maui, and Hawaii.[51] These renewable dispatchable generation PPAs ("RDG-PPA") featured contractual provisions that represented significant improvements over previous renewable energy PPAs, including lower unit pricing, ranging between $0.08/kWh to $0.12/kWh,[52] and commitment to provide a fixed amount of

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Hu Honua asserts substantively the same arguments in support of a waiver. See "Hu Honua Bioenergy, LLC's Prehearing Testimonies; Attachment A; Exhibits 'Hu Honua-100' – 'Hu Honua-800'; and Certificate of Service," filed January 28, 2020 ("Hu Honua Prehearing Testimonies"), Hu Honua T-1 at 24-26 and Hu Honua T-4 at 6-7.

[51]See Docket Nos. 2018-0430, 2018-0431, 2018-0432, 2018-0433, 2018-0434, 2018-0435, and 2018-0436.

[52]See https://www.hawaiianelectric.com/new-solar-plus-storage-projects-set-low-price-benchmark-for-renewable-energy-in-hawaii, last accessed July 7, 2020.

dispatchable energy to the utility at the utility's discretion (i.e., available capacity), thereby eliminating a number of undesirable contractual provisions, such as seniority curtailment, "evergreen" renewal, and risk-adjusted pricing.[53] In addition, the RDG-PPAs, with their firm dispatchability, provide increased system reliability and grid stability, as well as the operational flexibility to "allow [the utility] to 'best meet the needs of the Company's system . . . .'"[54]

To date, the Commission has approved six of the RDG-PPAs, including two on Hawaii Island, both 30 MW renewable facilities paired with a battery energy storage system ("BESS") of 120 MW-hours ("MWh"), and which feature unit pricing of $0.08/kWh and $0.09/kWh, respectively.[55]

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[53]See e.g., In re Hawaiian Elec. Co., Inc., Docket No. 2018-0434, Decision and Order No. 36232, filed March 25, 2019 ("D&O 36232"), at 58-62 (aside from the unit price, the provisions in the PPA in Docket No. 2018-0434 are substantively identical to the PPAs submitted in Docket Nos. 2018-0430, 2018-0431, 2018-0432, 2018-0433, 2018-0435, and 2018-0436).

[54]D&O 36232 at 62.

[55]See In re Haw. Elec. Light Co., Inc., Docket No. 2018-0430, Decision and Order No. 36233, filed March 25, 2019; In re Haw. Elec. Light Co., Inc., Docket No. 2018-0432, Decision and Order No. 36234, filed March 25, 2019; In re Haw. Elec. Co., Inc., Docket No. 2018-0431, Decision and Order No. 36236, filed March 25, 2019; In re Haw. Elec. Co., Inc., Docket No. 2018-0434, Decision and Order No. 36232, filed March 25, 2019; In re Haw. Elec. Co., Inc., Docket No. 2018-0435, Decision and Order No. 36231, filed March 25, 2019; and In re Maui Elec. Co., Ltd., Docket No. 2018-0436, Decision and Order No. 36235,

In addition, in Docket No. 2017-0352, the Hawaiian Electric Companies have recently completed their second round of competitively bid RFPs for RDG-PPAs, which have resulted in the selection of sixteen new solar-plus-storage or stand-alone storage projects for PPA negotiations, including three new projects on Hawaii Island (Keahole Battery Energy Storage, Puako Solar PV + Battery Storage, and Waikoloa Village Solar + Storage).[56]

These RDG-PPA projects have transformed the renewable energy procurement market in Hawaii by demonstrating that competitive bidding can result in PPAs that provide firm, dispatchable renewable energy and ancillary grid services at increasingly lower prices.[57] Pertinently, the approved RDG-PPA

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filed March 25, 2019. The sixth of the initial RDG PPAs, Docket No. 2018-0433, is currently pending before the Commission.

[56]See https://www.hawaiianelectric.com/hawaiian-electric-posts-new-renewable-energy-projects-details; and https://www.hawaiianelectric.com/clean-energy-hawaii/our-clean-energy-portfolio/renewable-project-status-board, last accessed July 7, 2020.

[57]In approving the first round of RDG-PPAs, the Commission observed that there appears to be a declining trend in the contract pricing for solar-plus-storage PPAs. See D&O 36232 at 53-54 n.155 (citing In re Kauai Island Util. Coop., Docket No. 2017-0443, Decision and Order No. 35538, filed June 20, 2018 (approving contract pricing of $0.10850/kWh); In re Kauai Island Util. Coop., Docket No. 2017-0018, Decision and Order No. 34723, filed July 28, 2017 (approving contract pricing of $0.1108/kWh); and In re Kauai Island Util. Coop., Docket No. 2015-0331, Decision and Order No. 33557, filed February 26, 2016 (approving contract pricing of $0.145/kWh)).

projects for Hawaii Island, AES Waikoloa Solar, LLC (Docket No. 2018-0430) and Hale Kuawehi Solar LLC (Docket No. 2018-0432) are 30 MW in size, which is slightly larger than the 21.5 MW for the Hu Honua Project,[58] and, at $0.08/kWh and $0.09/kWh, respectively, are significantly less expensive than the Hu Honua Project's estimated pricing of $0.221/kWh.[59]

Furthermore, it appears that there is uncertainty as to whether the Hu Honua Project will receive the federal ITC. As a result of "unanticipated delays beyond 2018 which were outside of its control," Hu Honua failed to meet the safe harbor requirements for the federal ITC by placing the Project in service by the end of 2018.[60] As a result, "obtaining the ITC is no longer a guarantee

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[58]See HELCO Prehearing Testimonies, HELCO T-1 at 20.

[59]See HELCO Letter Request, Exhibit B at 14 (estimating an "all-in levelized cost of $.221/kWh, assuming a dispatch of 200,000 MWh . . . .").

[60]See Hu Honua Prehearing Testimonies, Hu Honua T-3 at 3-4. See also, HELCO Letter Request, Exhibit B at 25-26 (Confidential).

It appears that the Project delays arose from a Department of Health inspection which concluded that Hu Honua had violated state water pollution laws by discharging industrial wastewater into the Project's injection wells. See https://www.civilbeat.org/2018/09/big-island-wood-burning-power-plant-raises-environmental-concerns/; and https://www.bizjournals.com/pacific/news/2018/11/30/hawaii-doh-investigation-finds-hu-honua-bioenergy.html, last accessed July 7, 2020.

under applicable safe harbor provisions."[61] This affects one of Applicants' core arguments for granting a waiver, which was that the delay associated with competitive bidding risked a loss of the federal ITC which helped make the Project cost effective.[62]

3.

The Competitive Bidding Framework

Part II.A.3. of the Competitive Bidding Framework states, in relevant part, that "[c]ompetitive bidding, unless the Commission finds it to be unsuitable, is established as the required mechanism for acquiring a future generation resource or a bloc of generation resources . . . ."[63] Accordingly, the presumption under the Framework is that competitive bidding for new generation resource is desirable and waivers should be treated as an exception.[64]

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[61]Hu Honua Prehearing Testimonies, Hu Honua T-3 at 3.

[62]According to Hu Honua, without the federal ITC, the Project "may never be profitable . . . ." Hu Honua response to CA/Hu Honua-IR-102.b.1., filed February 18, 2020.

[63]Competitive Bidding Framework at 3. Concomitantly, the Framework provides a process by which an electric utility may submit an application for a waiver from competitive bidding for a project. See id. at 6-7 (Part II.A.4.).

[64]See e.g., "Tawhiri Power LLC's Prehearing Testimony; and Certificate of Service," filed January 28, 2020 ("Tawhiri Prehearing Testimony"), Exhibit 1 at 3 ("The Framework was developed to protect the public interest, thus any request for a waiver must be examined with strict scrutiny with the burden

The Competitive Bidding Framework, Part II.A.3., goes on to provide, in relevant part:

> b. Under certain circumstances, to be considered by the Commission in the context of an electric utility's request for waiver under Part II.A.4., below, competitive bidding may not be appropriate. These circumstances include: (i) when competitive bidding will unduly hinder the ability to add generation in a timely fashion; (ii) when the utility and its customers will benefit more if the generation resource is owned by the utility rather than by a third-party (for example, when reliability will be jeopardized by the utilization of a third-party resource); (iii) when more cost-effective or better performing generation resources are more likely to be acquired more efficiently through different procurement processes; or (iv) when competitive bidding will impede or create a disincentive for the achievement of IRP goals, [RPS] standards or other government objectives and policies, or conflict with requirements of other controlling laws, rules, or regulations.
>
> c. Other circumstances that could qualify for waiver include: (i) expansion or repowering of existing utility generating units; (ii) the acquisition of near-term power supplies for short-term needs; (iii) the acquisition of power from a non-fossil fuel facility (such as a waste-to energy facility) that is being installed to meet a governmental objective; and (iv) the acquisition of

being placed on the requestor. Request[s] for waiver must be the exception, not the status quo, in order to uphold the integrity of the competitive bidding process.").

power supplies needed to respond to an emergency situation.

d. Furthermore, the Commission may waive the Framework or any part thereof upon a showing that the waiver will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest.[65]

4.

Denying HELCO's Request For A Waiver

As a preliminary matter, the Commission observes that this is the third time it has addressed the issue of whether to grant HELCO's request for a waiver from the Framework for the Hu Honua Project. Notwithstanding the Commission's prior decisions on this issue, the Commission retains discretion to consider this issue in light of the record and circumstances at the time the issue is before the Commission.

This is consistent with the prior history of this Project. Upon submission of the Amended PPA, the Commission corrected HELCO's presumption that the waiver granted in Docket No. 2008-0143 would be automatically transferred to apply to the Amended PPA and stated that this issue would be re-examined in

[65]Competitive Bidding Framework at 4-5.

light of the changes in circumstances since the original granting of the waiver.[66] Likewise, when this docket was remanded back to the Commission, the Commission expressly stated that the entire statement of issues, including HELCO's waiver request, would be considered and instructed the Parties to submit supplemental briefing on this issue.[67]

Thus, in taking up this issue, the Commission again considers all the relevant evidence and surrounding circumstances to inform its decision. In pertinent part, as discussed above, the initiation of Docket No. 2017-0352 and the resulting RDG-PPAs have produced real alternatives against which to evaluate the benefits and costs of the Hu Honua Project and diminish the persuasiveness of Applicants' waiver arguments. Many of the prior bases for supporting a waiver for the Project, including lack of other dispatchable, renewable energy projects, the delays associated with developing other renewable projects in comparison to Hu Honua, and the contributions to the State's renewable energy goals have been challenged by the competitively bid projects arising from Docket No. 2017-0352, which have been shown to provide similar benefits at significantly lower costs to customers.

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[66] See Order No. 34554 at 6-7.

[67] See Order No. 36382 at 14.

The Hu Honua Project is expected to provide a net output of approximately 21.5 MW of committed capacity, as well as ancillary services, to HELCO on a 24-hour/7-day per week basis, with a normal dispatch range of 10.0 to 21.5 MW, with a minimum load of 7 MW for emergency system constraints.[68] In comparison, the AES Waikoloa Solar and Hale Kuawehi Solar projects consist of a PV system capable of producing 30 MW(ac) paired with a BESS capable of storing 120 MWh of energy and which is directly charged from the PV system.[69]

As evidenced above, both of these RDG-PPA projects are capable of providing dispatchable renewable energy, and are also able to provide greater capacity to HELCO than the Hu Honua Project. In addition, the Hu Honua Project requires a minimum must-run requirement of 10 MW under normal conditions[70] (i.e., HELCO must dispatch the Project at 10 MW or greater capacity), which may result in curtailment of other renewable

[68]Hu Honua Prehearing Testimonies, Hu Honua T-1 at 7.

[69]See AES Waikoloa Application at 13; and Docket No. 2018-0432, "Hawaii Electric Light Company, Inc.'s Application; Exhibits 1-10; Verification; and Certificate of Service," filed December 31, 2018, at 14-15.

[70]Amended PPA at 60 of 238 (Section 3.3(b)). As noted above, the Project may operate at a lower load of 7 MW in emergency situations.

resources on HELCO's system[71] (the Commission further notes that this may also result in the un-economic dispatch of other generation units on HELCO's system).

As reflected above, the results of these initial rounds of RFPs for RDG-PPAs undermine Applicants' argument that the Hu Honua Project is uniquely positioned to expeditiously and efficiently address State renewable energy objectives and policies. As noted above, the first round of RDG-PPAs have resulted in approval of two renewable projects on Hawaii Island, which, collectively, are expected to contribute the same amount of renewable energy towards the Companies' RPS goals.[72]

Additionally, these RDG-PPA projects are priced at significantly lower costs to customers. At $0.08-0.09/kWh, the approved AES Waikoloa Solar and Hale Kuawehi projects are less than half of the Hu Honua Project's effective levelized price estimate of $0.221/kWh.[73] The following chart illustrates the effective price of the Hu Honua Project over the term of the PPA,

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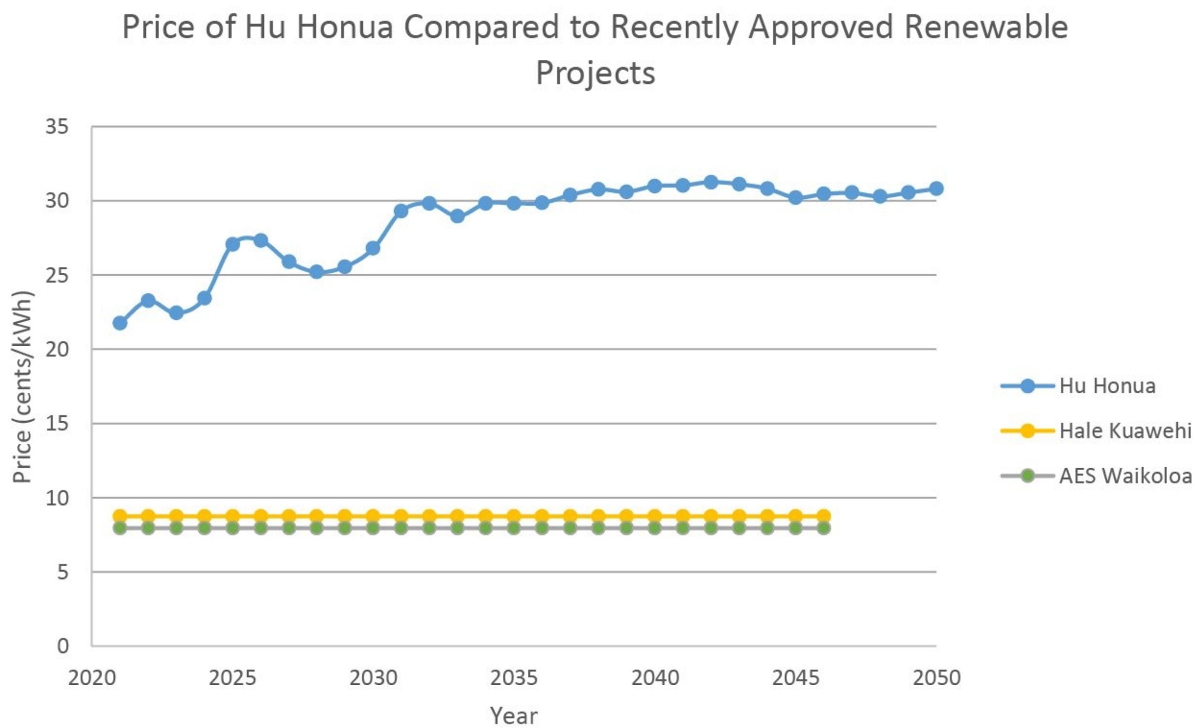
[71]See "Tawhiri Power LLC's Supplemental Briefing on Issues Nos. 1-3; and Certificate of Service," filed September 17, 2019, at 7.

[72]See https://www.hawaiianelectric.com/clean-energy-hawaii/our-clean-energy-portfolio/renewable-project-status-board, last accessed July 7, 2020.

[73]See Tawhiri Prehearing Testimony, Exhibit 1 at 4. See also, Competitive Bidding Framework, Part II.A.3.a.

compared to the unit price of the AES Waikoloa and Hale Kuawehi projects.[74]



These considerations are not insignificant, given the impact this could have on ratepayers. Notably, the RDG-PPA projects are estimated to result in decreases to customer bills

[74]See Hu Honua Prehearing Testimonies, Hu Honua-501 at 8 and 12. Hu Honua argues that the effective price in the Amended PPA does not reflect the full range of benefits provided by the Hu Honua Project, and that the unit prices for AES Waikoloa and Hale Kuawehi understate the actual cost of those projects. However, as discussed herein, the Commission finds that these issues should be addressed in the context of a competitive bidding process, and that under the circumstances, granting a waiver of the competitive bidding framework for the Hu Honua Project would not be in the public interest.

throughout the length of their PPA terms,[75] whereas the Hu Honua Project is estimated to result in an increase in customer bills until near the end of the PPA term.[76]

This is especially relevant now, in light of the economic challenges resulting from the government measures in response to the global COVID-19 pandemic.[77] As Hawaii's ratepayers struggle to recover financially, it is more important than ever to ensure that customer bills are supporting projects that offer the best value, particularly in situations like this where the projects are similar in size (the AES Waikoloa Solar and Hale Kuawehi projects

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[75]See e.g., AES Waikoloa Application, Exhibit 3, Attachment 4 at 1.

[76]See HELCO Prehearing Testimonies, HELCO-305 at 1-2 (indicating that residential customers are estimated to see an increase in their bills until 2049 if the Project is approved). See also, CA Prehearing Testimony, CA-T-1 at 16; and Tawhiri Prehearing Testimony, Exhibit 1 at 7.

[77]On March 5, 2020, Governor David Y. Ige issued his first Emergency Proclamation related to COVID-19, authorizing and invoking a variety of provisions related to the State's response to the COVID-19 emergency situation, available at: https://governor.hawaii.gov/wpcontent/uploads/2020/03/2003020-GOV-EmergencyProclamation_COVID19.pdf. The Governor has issued nine additional Proclamations since that time, providing details regarding the State's response to the COVID-19 Pandemic. See https://governor.hawaii.gov/emergency-proclamations/, last accessed July 7, 2020.

are 30 MW each and the Hu Honua Project is 21.5 MW) and offer similar benefits.[78]

This undermines Applicants' contention that denial of HELCO's request for a waiver for the Hu Honua Project will result in the less efficient and more costly addition of renewable energy on to HELCO's system, as competitive bidding appears to have produced renewable energy projects that are projected to cost less than the Hu Honua Project.[79]

Furthermore, due to the BESS component, the RDG-PPA projects are capable of providing grid supportive services. As stated by HELCO in Docket No. 2018-0430 (approving the AES Waikoloa Solar project), "[HELCO] anticipates that it will dispatch the battery energy storage system's stored energy to [HELCO's] grid to, among other things, help with ramping towards [HELCO's] periods of peak energy demand (rather than ramping up conventional generation), offset night-time fossil fuel generation, and assist in grid stabilization subject to discharge limits."[80]

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[78]See Competitive Bidding Framework, Part II.A.3.a(i) and (ii).

[79]See Tawhiri Prehearing Testimony, Exhibit 1 at 4-5. See also, Competitive Bidding Framework, Part II.A.3.b(iii).

[80]Docket No. 2018-0430, "Hawaii Electric Light Company, Inc.'s Application; Exhibits 1-10; Verification; and Certificate of Service," filed December 31, 2018 ("AES Waikoloa Application"), at 15.

This demonstrates that competitive bidding is capable of timely producing grid-scale renewable energy projects that can supply similar levels of renewable energy to HELCO (as well as the other Hawaiian Electric Companies) in addition to providing grid services to support the integration of intermittent renewable resources,[81] and rebuts Applicants' argument that a waiver for the Hu Honua Project is necessary to achieve similar benefits.[82]

The RDG-PPAs also further the State's renewable energy policies and goals by helping HELCO to meet its RPS goals and increasing the amount of renewable energy on HELCO's system (by both providing direct renewable energy to HELCO's grid from the solar projects' PV panels, as well as utilizing the projects' BESS to provide grid services to facilitate greater integration of intermittent, renewable energy).[83] Concomitantly, the Commission is not persuaded that denying HELCO's request for a waiver for the Hu Honua Project will frustrate the State's renewable energy objectives and goals.

Moreover, Hu Honua has failed to achieve safe harbor of the federal ITC, which required the Project to be placed in service

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[81] See Competitive Bidding Framework, Part II.A.3.a(iv).

[82] See Competitive Bidding Framework, Part II.A.3.b(iii).

[83] See Competitive Bidding Framework, Part II.A.a(v).

by the end of 2018.[84] While "Hu Honua is still hopeful of recovering ITC tax credits on the basis of its continuous construction and other circumstances[,]"[85] Hu Honua does not identify what these "other circumstances" are, and the fact that the Project has still not been fully completed[86] makes the prospect of obtaining the federal ITC seem increasingly unlikely. Accordingly, the Commission is not convinced that a waiver is justified by the need to claim the federal ITC, as Hu Honua's ability to claim the federal ITC appears speculative at this point.[87]

To the extent Applicants' claim that granting a waiver for the Hu Honua Project will result in community benefits, such as job creation and economic stimulation, the Commission does not see

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[84]See Hu Honua Prehearing Testimonies, Hu Honua T-3 at 3-4. See also, HELCO Letter Request, Exhibit B at 25-26 (Confidential).

[85]Hu Honua Prehearing Testimonies, Hu Honua T-3 at 4.

[86]See Letter From: D. Yamamoto To: Commission Re: Docket No. 2017-0122; Hu Honua Bioenergy, LLC's Response to the State of Hawaii Public Utilities Commission's Letter Dated May 22, 2020, filed June 12, 2020, at 2 (indicating that, while "nearly complete," the Project is not yet completed and ready for operation).

[87]See Competitive Bidding Framework, Part II.A.3.a(i) and (ii) and compare with Part II.A.3.b(iii)(describing a situation where "more cost-effective or better performing generation resources are more likely to be acquired more efficiently through different procurement processes[]" outside of competitive bidding). As noted above, even assuming the Hu Honua Project were to receive the federal ITC, the Project's costs are still expected to be higher than the RDG-PPAs from the Phase 1 RFPs.

how these are unique to the Hu Honua Project or how they justify a waiver from the Competitive Bidding Framework. Arguably, any renewable project selected for Hawaii Island would provide economic stimulation and job creation, in that a facility would need to be built, maintained, and operated. It is unclear how or whether requiring the Hu Honua Project to go through competitive bidding would eliminate these benefits, in that the winning bid, be it Hu Honua or another bidder for a renewable energy project, would still be required to build and operate a renewable facility on Hawaii Island.

To the extent Hu Honua contends that its Project conveys unique community economic benefits due to the specific operation of the Project and/or the related business of providing biomass to fuel the Project, the Commission is not persuaded that these circumstances are sufficient to distinguish the Project from any other competitively bid project to the level necessary to justify a waiver. In fact, such benefits are precisely the kind of factors that would be evaluated during a competitive bidding process.

The Commission also observes that the fact that the Amended PPA's pricing is de-linked from the price of fossil fuel, alone, does not compel a waiver from the competitive bidding framework. As demonstrated in Docket No. 2017-0352, an RFP for renewable, dispatchable projects is equally capable of producing competitive bids with proposed pricing that is de-linked from the price of fossil fuels.

Lastly, it does not appear that granting a waiver to the Hu Honua Project will allow HELCO to expedite the retirement of fossil fuel plants. HELCO has previously informed Hu Honua that its planned retirement of its fossil fuel plants predated the Hu Honua Project and, as such, "it would be improper for the economic analysis to reflect the Hu Honua facility replacing one or more of the three [HELCO] steam units that were already slated for removal from service prior to the appearance of Hu Honua."[88] As a result, "the only resource the Hu Honua facility could displace or defer were grid-scale wind or PV and load shifting batteries [i.e., other renewable energy generation resources]

[88]Letter From: D. Brown To: Commission Re: Docket No. 2017-0122 - Hawaii Electric Light Company, Inc.; Amended and Restated PPA with Hu Honua Bioenergy, LLC; Transmittal of Hawaii Electric Light Letter Dated June 20, 2017, filed June 20, 2017 ("HELCO-Hu Honua Letter"), at 2. See also, id. at 3 ("In addition, as explained in the previous section above, there were no existing steam units that could be displaced since it was already assumed that the existing steam units would be removed from service before Hu Honua entered the picture with negotiations in April 2016."); and HELCO response to Tawhiri-HELCO-SIR-6.a, filed January 6, 2020 ("There is no plan to immediately retire any specific generating plants once the Hu Honua plant begins providing energy and capacity to the system.").

. . . [the removal of which] simply increased plan costs because they were economical resources to have in the plan."[89]

This is also reflected in HELCO's updated resource plans, in which the expected retirement of HELCO's fossil fuel plants are unaffected by the addition of the Hu Honua Project.[90]

While none of these considerations are, by themselves, dispositive, when taken as a whole, the Commission finds that they compel the conclusion that HELCO's requested waiver for the Hu Honua Project is unnecessary under the circumstances, as it appears that competitive bidding has resulted in renewable

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[89]HELCO-Hu Honua Letter at 3.

Subsequently, in response to an IR from Hu Honua, HELCO stated that addition of the Hu Honua Project could result in the retirement of HELCO's Puna, Hill 5, and Hill 6 steam units in 2019, rather than in 2020. HELCO response to HHB-HELCO-IR-9.a, filed July 6, 2017. However, this was apparently premised on Hu Honua beginning operation according to schedule. As the Hu Honua Project is still under construction, HELCO's Puna, Hill 5, and Hill 6 steam units are still in operation and have not been prematurely retired.

[90]See Letter From: J. Ignacio To: Commission Re: Docket No. 2017-0122 - Hawaii Electric Light Company, Inc. Amended and Restated PPA with Hu Honua Bioenergy, LLC; Project Economic and Bill Impact Analysis, filed May 24, 2017, Exhibit A at 3-4. See also, CA Prehearing Testimony, CA-T-2 at 11-12.

This resource plan remained unchanged by HELCO even after the docket was re-opened in 2019. See Letter From: B. Hiyane To: Commission Re: Docket No. 2017-0122 - For Approval of a Power Purchase Agreement for Renewable Dispatchable Firm Energy and Capacity; Hawaii Electric Light Company, Inc.'s Response to Order No. 36382 and Greenhouse Gas Analyses, filed October 21, 2019, Attachment 1, Exhibit 2, Attachment 1; and HELCO Prehearing Testimonies at HELCO-301.

projects that are expected to provide similar benefits on more favorable terms to HELCO's customers.[91] Under these circumstances, the Commission is not convinced that granting a waiver for the Hu Honua Project is justified or in the public interest.

To be clear, this is not to say that the Hu Honua Project is irrelevant or that biomass resources do not have a place in Hawaii's renewable energy portfolio. The pertinent issue here is whether this particular Project should be exempted from competitive bidding against other renewable projects to determine the best value for HELCO and its customers. The Commission is aware that biomass resources offer different considerations than other renewable resources, such as solar and wind, but believes that these distinctions are better weighed and addressed in the context of the Competitive Bidding Framework.

Based on the above, the Commission makes the following findings and conclusions:

1. The competitive bidding process conducted in the RFP proceeding, Docket No. 2017-0352, in parallel with this proceeding has resulted in the approval, to date, of six renewable energy PPAs of comparable size to the Hu Honua Project, including two on Hawaii Island, which offer similar benefits in terms of

[91]See e.g., CA Prehearing Testimonies, CA-T-1 at 10.

renewable energy and grid services and which are priced significantly lower than the Hu Honua Project.

2. A second phase of the RFP process is currently underway and has yielded the HECO Companies' selection of an additional sixteen bids for renewable energy projects, including three on Hawaii Island.[92]

3. Nothing in HRS §§ 269-27.2 or 269-91, et seq., distinguishes or prioritizes renewable energy produced from biomass resources, versus solar, wind, or other sources of renewable energy, and the underlying goals and policies of promoting and facilitating greater amounts of renewable energy appear to be equally served by the RDG-PPA projects as by the Hu Honua Project.

4. HRS § 269-27.3 provides the Commission with the authority to grant preferential rates to the purchase of renewable energy produced in conjunction with agricultural activities, but does not mandate any particular Commission action, nor does it

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[92]Two of these three bids are for solar-plus-storage projects, each of which is expected to provide 60 MW of renewable energy and is paired with up to 240 MWh of energy storage. The third bid is for a standalone energy storage project of 12 MW. See https://www.hawaiianelectric.com/hawaiian-electric-selects-16-projects-in-largest-quest-for-renewable-energy-energy-storage-for-3-islands; and https://www.hawaiianelectric.com/clean-energy-hawaii/our-clean-energy-portfolio/renewable-project-status-board, last accessed July 7, 2020.

indicate that a request for a PPA with preferential rates under this statute cannot be made under the Competitive Bidding Framework or is otherwise exempted from the Framework.

5. Based on the above, the Commission concludes that requiring the Hu Honua Project to go through the competitive bidding process will not impede the government objectives and policies set forth in HRS §§ 269-27.2, 269-27.3, and 269-91, et seq., under the circumstances presented in this docket.

6. Hu Honua sought, but has not yet fulfilled, the safe harbor requirements for the federal ITC, which required the Hu Honua Project to be placed in service by the end of 2018. As a result, obtaining the federal ITC is no longer a guarantee under applicable safe harbor provisions.[93]

7. Based on the above, the Commission concludes that requiring the Hu Honua Project to go through competitive bidding is not likely to result in more costly or less efficient procurement of biomass based on the expiration of the federal ITC, as it appears speculative, at best, that Hu Honua will receive the federal ITC, even if approved for a waiver, under the circumstances.

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[93]See Hu Honua Prehearing Testimonies, Hu Honua T-1 at 25.

8. While the estimated timeline for the first round of RDG-PPA projects to come online is slightly longer than for the Hu Honua Project,[94] taking the totality of the circumstances into consideration, including the significant difference in PPA pricing and the estimated bill impact to HELCO customers, the Commission finds that this slight difference in estimated project completion, alone, does not justify a waiver. Furthermore, the Commission notes that these are just estimated project completion dates, and that the Hu Honua Project itself has been subject to a number of substantial delays[95] that has placed it far behind its original estimated completion date.[96]

9. While the Hu Honua Project may result in community benefits such as economic stimulation and employment creation, the Commission is not convinced that these are unique to the Hu Honua Project, as any approved project developer would be required to build, maintain, and operate a renewable facility on Hawaii Island and would also convey economic benefits to the community. Thus,

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[94]Hu Honua represents that its Project will be completed in 2020. The AES Waikoloa Solar project is expected to be completed in 2021 and the Hale Kuawehi Solar project is expected to be completed in 2022. See https://www.hawaiianelectric.com/clean-energy-hawaii/our-clean-energy-portfolio/renewable-project-status-board, last accessed July 7, 2020.

[95]See pgs. 5-6, supra.

[96]Under the Original PPA, the latest Commercial Operations Date for the Hu Honua Project was December 2015. See Order No. 33516 at 1.

a waiver is not necessary, as community benefits could be provided by a successful competitive bidder, whether it be Hu Honua or another renewable energy project, and the unique community benefits proposed by the Hu Honua Project are better evaluated in the context of the Competitive Bidding Framework.

10. The RDG-PPAs approved as part of the first round of RFPs arising from Docket No. 2017-0352 all contain pricing that is de-linked from the price of fossil fuels. Accordingly, while relevant, the Commission does not find that this supports a waiver for the Hu Honua Project under the circumstances, and that, to the extent the Project offers unique benefits in this area, they are better evaluated in the context of the Competitive Bidding Framework.

11. According to HELCO's updated resource plans, the addition of the Hu Honua Project in 2020 is not expected to accelerate the retirement or conversion of any of HELCO's existing fossil fuel plants. Consequently, approving a waiver for the Hu Honua Project does not appear to advance this consideration in any meaningful way.

12. Taking all of the above findings and conclusions into account, the Commission ultimately concludes that HELCO has not met its burden of proof in support of its request for a waiver from the Competitive Bidding Framework for the Hu Honua Project.

13. Based on the Commission's denial of HELCO's request for a waiver from the Competitive Bidding Framework for the Hu Honua Project, the Commission does not consider and dismisses the Amended PPA, since the request for a waiver is a threshold issue that is addressed before addressing the Amended PPA itself.[97] Concomitantly, the Commission finds that the remaining issues in this proceeding are moot.

B.

Miscellaneous Matters

The Commission observes that there are a number of pending motions submitted by LOL in this proceeding, including: a Motion to Compel, filed March 16, 2020;[98] a Motion for Leave to respond to HELCO's Memorandum in Opposition to LOL's Motion to Compel, filed March 27, 2020;[99] a Motion for Leave to respond to Hu Honua's Memorandum in Opposition to LOL's Motion to Compel,

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[97]See In re Hawaiian Elec. Co., Inc., Docket No. 2018-0400, Order No. 36502, "Dismissing Application Without Prejudice," filed September 6, 2019.

[98]"Life of the Land's Motion to Compel; Memorandum in Support of Motion; Declaration; and Certificate of Service," filed March 16, 2020.

[99]"Life of the Land's Motion for Leave re HELCO's Motion; Memorandum in Support of Motion for Leave; Declaration; and Certificate of Service," filed March 27, 2020.

filed March 27, 2020;[100] and a Motion to Strike, filed June 12, 2020.[101]

In light of the Commission's ruling above denying HELCO's waiver request, and the resulting dismissal of the Amended PPA, the Commission finds that these outstanding motions are moot.

C.

Impact Of Greenhouse Gas Emissions Related To The Project

In light of the Commission's ruling above, the Commission does not make any express findings or conclusions regarding Issue No. 4, regarding the estimated impacts of GHG emissions associated with the Hu Honua Project. As the Commission's decision today renders moot consideration of the Project itself based on the waiver issue, the separate issue of LOL's due process right to be heard on the Project's impact on LOL's property interest in a clean and healthful environment is no longer germane, in that the Project will not proceed as a result of this docket.

[100]"Life of the Land's Motion for Leave re Hu Honua Motion; Memorandum in Support of Motion for Leave; Declaration; and Certificate of Service," filed March 27, 2020.

[101]"Life of the Land's Motion to Strike; Declaration of Henry Q. Curtis; and Certificate of Service," filed June 12, 2020.

That being said, the Commission is mindful of the legal guidance provided by the Hawaii Supreme Court, particularly as it pertains to the Commission's statutory obligation to explicitly consider the impact of GHG emissions associated with the Amended PPA.[102] Accordingly, the Commission has reviewed the record on the issue of the Project's GHG emissions impact and offers the following discussion.

On October 21, 2019, pursuant to Order No. 36382,[103] HELCO and Hu Honua submitted analysis providing estimates of avoided GHG emissions associated with the Hu Honua Project.[104]

[102]See In re Haw. Elec. Light, 145 Hawaii at 5, 445 P.3d at 677.

[103]In reopening the docket on remand following the Hawaii Supreme Court's decision, Order No. 36382, in relevant part, instructed Applicants to "analyze the GHG impacts of the Project and supplement the record" with the following analyses: (1) updated assumptions used for simulating HELCO's power system, including the RDG-PPAs approved as part of the first round of the RFP process; (2) estimated net "smokestack" GHG emission impacts (calculated as avoided emissions from fossil fuel plants less GHG emissions from the Hu Honua Project); and (3) estimated net lifecycle GHG emission impacts (calculated as avoided lifecycle emissions from fossil fuel plants less lifecycle emissions from the Hu Honua Project). Order No. 36382 at 10-12.

[104]Letter From: B. Hiyane To: Commission Re: Docket No. 2017-0122 - For Approval of a Power Purchase Agreement for Renewable Dispatchable Firm Energy and Capacity; Hawaii Electric Light Company, Inc.'s Response to Order No. 36382 and Greenhouse Gas Analyses, filed October 21, 2019 (the cover letter and summary are referred to herein as the "HELCO GHG Analysis" and the attached GHG analysis by Ramboll is referred to as the "Ramboll Report"); and Letter From: D. Yamamoto To: Commission Re: Docket No. 2017-0122: Hu Honua Bioenergy, LLC's Greenhouse Gas Emissions

HELCO submitted an estimated net "smokestack" GHG emissions impact analysis and an estimated lifecycle GHG emissions impact analysis, both prepared by Ramboll US Corporation ("Ramboll"). Hu Honua submitted similar analyses prepared by Environmental Resource Management ("ERM"); Hu Honua also submitted an additional net lifecycle GHG emissions analysis by JPB, LLC ("JPB").[105] The results of the Ramboll and ERM Analyses are summarized in the tables below:[106]

Impact Analysis, filed October 21, 2019 (the cover letter and summary are referred to herein as the "Hu Honua GHG Analysis" and the attached GHG analysis prepared by ERM is referred to as the "ERM Report").

[105]See Hu Honua response to CA/Hu Honua-IR-35, Exhibit 1, filed November 19, 2019 ("JPB Analysis"). It appears that JPB provided an estimate of the GHG emissions associated with building and operating a hypothetical fossil fuel unit, in order to provide a comparison for evaluating the lifecycle GHG emissions between the Hu Honua Project and a fossil fuel plant See ERM Report at 13; see also, CA Prehearing Testimonies, CA-T-3 at 4-5.

[106]See HELCO GHG Analysis, Attachment 1 at 2-6.

Both Ramboll and ERM modeled scenarios that included and excluded the operation of Puna Geothermal Ventures ("PGV"), another independent power producer which has a PPA with HELCO to supply firm generation (geothermal). See HELCO GHG Analysis, Attachment 1 at 2. Due to the lower Puna eruption that occurred in 2018, PGV's operations were suspended due to lava flow damage to the facility. In late 2019, HELCO filed an application for approval of a renegotiated PPA. See In re Hawaii Elec. Light Co., Inc., Docket No. 2019-0333. Based on HELCO's GHG filings, if PGV is brought back online to HELCO's system, this would be expected to reduce the run time for the Hu Honua Project (thereby reducing the Project's GHG emissions).

Table 1

Net "Smokestack" GHG Emissions (metric tons of CO_2 emissions)				
	Excluding Biogenic CO_2e		Including Biogenic CO_2e	
	With PGV	Without PGV	With PGV	Without PGV
Avoided[107] Smokestack GHG emissions from HELCO systems (Ramboll)	1,768,111	2,144,291	2,073,771	2,571,272
Smokestack GHG emissions from Hu Honua Project (ERM)	0[108]	0	6,996,000	7,760,000
"Net" Smokestack GHG Emissions	1,768,111	2,144,291	-4,992,229[109]	-5,188,728

[107]In reading these figures, the Commission clarifies that the positive numbers refer to the avoided (i.e., reduction) in GHG emissions that are expected to occur.

[108]Because the Hu Honua Project intends to utilize biomass as its fuel source, its biogenic CO_2 emissions in the ERM modeled scenario are zero when biogenic CO_2e is excluded from the model.

[109]Likewise, these "negative" figures are intended to reflect an increase in GHG emissions under these scenarios (i.e., a "negative avoided" impact equals an "increase"). See CA Prehearing Testimony, CA-T-3 at 16-17.

Table 2

Net Avoided "Lifecycle" GHG Emissions (metric tons of CO2e)				
	Excluding Biogenic CO2e		Including Biogenic CO2e	
	With PGV	Without PGV	With PGV	Without PGV
Avoided Lifecycle GHG Emissions from HELCO system (Ramboll)	2,148,354	2,625,971	2,454,014	3,052,952
Lifecycle GHG emissions from Hu Honua Project (ERM)	280,000	294,000	n/a[110]	n/a
Net Lifecycle GHG emissions	1,868,354	2,331,971	n/a	n/a

The Commission observes that a significant factor in analyzing the Project's estimated GHG emission impact is whether biogenic CO_2 emissions, i.e., biomass and biodiesel, are included. As reflected above, inclusion of biogenic emissions results in a net increase in smokestack GHG emission for the Project. While Hu Honua did not provide a net lifecycle GHG emissions impact analysis that included biogenic emissions, the fact that the

[110]ERM did not calculate estimated lifecycle GHG emissions for the Hu Honua Project for a scenario that include biogenic CO_2 emissions and neither HELCO nor Ramboll independently estimated the GHG emissions from the Hu Honua Project.

inclusion of biogenic emissions in the net smokestack analysis resulted in an increase in net GHG Project emissions infers that an increase in net lifecycle GHG emissions would have resulted had biogenic emissions been included.

Hu Honua asserts that excluding biogenic emissions from its GHG emission analysis is supported by Hu Honua's related efforts to cultivate biomass to supply the Project. "[T]he general premise [behind this policy] is that the amount of GHG emitted from using biomass as a fuel source equals the amount sequestered in the carbon cycle as biomass stocks are regrown, and therefore, achiev[es] carbon neutrality."[111]

In this regard, Hu Honua is supported by the HAR governing the State Department of Health's GHG emission reduction plans, which consider biogenic CO_2 emissions to be zero, as well as the federal Environmental Protection Agency's 2018 policy statement on biogenic sources of GHG emissions as generally considered to be carbon neutral.[112]

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[111]CA Prehearing Testimonies, CA-T-3 at 15.

[112]See "Division of Consumer Advocacy's Supplemental Briefing on the Filed Greenhouse Gas Emissions Analyses," filed January 14, 2020 ("CA GHG Analyses Brief"), at 24 (citing HAR § 11-60.1-204 and "EPA's Treatment of Biogenic Carbon Dioxide (CO_2) Emissions from Stationary Sources that Use Forest Biomass for Energy Production," at 1, April 23, 2018, accessed at https://www.epa.gov/sites/production/files/2018-04/documents/biomass_policy_statement_2018_04_23.pdf).

That being said, the Commission shares the Consumer Advocate's concerns that such treatment "obscures the actual GHG emission intensity associated with burning biomass feedstock."[113] As reflected above, both the analyses performed by Ramboll and ERM concluded that net GHG emissions will significantly increase as a result of the Project when biogenic emissions are included. In addition, the Consumer Advocate has referenced material that indicates that there is an ongoing policy discussion at the federal level as to whether sources of biogenic carbon emissions should continue to be considered carbon neutral.[114] Accordingly, it may be prudent to keep the impact of biogenic CO_2 emissions in mind, as this issue continues to develop over time.

Furthermore, it appears that there are discrepancies in the assumptions used by Ramboll and ERM in calculating their respective GHG emission impacts. The Consumer Advocate observes that the "ERM utilized eGRID data from 2016, which does not reflect the most recent data available on HELCO's system . . . [which] has resulted in significantly higher GHG emissions and intensities associated with HELCO's fossil fuel-fired generators in comparison

[113]CA GHG Analyses Brief at 19.

[114]See CA GHG Analyses Brief at 24-26.

to the figures in the Ramboll GHG Analysis[,]" and do not appear to take into account the recent RDG-PPAs.[115]

In addition, it appears that ERM exclusively compared the Hu Honua Project's smokestack emissions to smokestack emissions from fossil fuel plants on HELCO's system, rather than a combination of fossil fuel and renewable generation sources.[116] While ERM appears to have acknowledged this,[117] it nonetheless continues its analysis "on a comparison between the Project and HELCO's existing fossil-fuel facilities at the same amount of projected dispatch in annual MWh for the 30 year term of the [Amended PPA][,]" on the basis that "choosing to prioritize the displacement of fossil fuel generation over displacing renewable generation would be consistent with meeting the State of Hawaii's 100% renewable energy goals."[118] Accordingly, it appears that

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[115]CA GHG Analyses Brief at 14.

[116]ERM Report at 2. See also, CA GG Analyses Brief at 15.

[117]ERM Report at 2 ("It is understood that HELCO intends to displace a significantly lesser amount of annual MWh of fossil-fuel generation over the 30 years [of the Amended PPA] compared to the Project's annual MWh because of HELCO's forecasted displacement of a combination of both renewable generation and fossil-fueled generation.") (emphasis in the original).

[118]ERM Report at 2. While Order No. 36382 did describe estimated net smokestack GHG emissions as "avoided emissions from fossil fueled plants" less "emissions from Hu Honua plant," Order No. 36382 at 11, this was not intended as license to ignore HELCO's resource planning. To the extent HELCO's long-term plans call for a diversified generation portfolio of fossil fuel and renewable energy resources, the net smokestack GHG emissions

rather than utilize the updated long-term resource plan provided by HELCO to model lifecycle GHG emissions, ERM instead substituted its own judgment as to how HELCO's generation facilities should be dispatched and used those assumptions to model the Project's net lifecycle GHG emissions.

As noted by the Consumer Advocate, this "resulted in significant differences between the GHG emissions and intensities calculated in the Ramboll GHG Analysis as compared to the ERM GHG Analysis."[119] Pertinently, the Commission observes that this methodology increases the avoided stack GHG emissions from HELCO's systems which correspondingly increases the amount of "net" smokestack emissions resulting from the Hu Honua Project (net smokestack emissions = avoided emissions from HELCO fossil fueled plants - emissions from Hu Honua Project).

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analysis should take this into account and utilize the estimated GHG emissions from those fossil fuel resources that HELCO anticipates using (as it appears Ramboll did in its analysis).

[119]CA GHG Analyses Brief at 15 and 16 (including Table 3); see also, CA Prehearing Testimonies, CA-T-3 at 5. In addition, compare HELCO GHG Analysis, Attachment 1 at 3 (Table 2.1) with Hu Honua GHG Analysis at 3 (Tables 2 and 3) (reflecting that ERM's analysis resulted in estimated GHG emissions from HELCO's facilities that are nearly double that of Ramboll's analysis).

Furthermore, as the Consumer Advocate observes, the Ramboll Report relies on the ERM Report to provide a comprehensive GHG emissions impact analysis for the Hu Honua Project: "ERM's results on the Net 'Smokestack' GHG Emissions impact on the Hu Honua Plant served as the basis for both ERM's and Ramboll's analyses of the Estimated Net 'Smokestack' and Lifecycle GHG Emissions Impact of adding Hu Honua to HELCO's system."[120] The interrelated nature of these reports heightens the risk that an error in the methodology, data, or assumptions may have corrupted the results of both Reports.[121]

As noted above, the Commission does not find it necessary to make findings on the issue of the Project's estimated GHG emissions impact in light of the denial of HELCO's waiver request, and refrains from doing so at this time. However, upon reviewing the record on this issue, the considerations discussed above indicate that there are still lingering concerns regarding the impact of the Project's GHG emissions.

Furthermore, due to Project's delays and the rapid progress of the Hawaiian Electric Companies' RFP process, the

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[120]CA GHG Analyses Brief at 17. See also, HELCO Prehearing Testimonies, HELCO T-4 at 4-5.

[121]On this issue, the Consumer Advocate has voiced several concerns with the development of assumptions and underlying calculations used in the ERM Report. See CA GHG Analyses Brief 18; and CA Prehearing Testimonies, CA-T-3 at 10-12.

assumptions underlying the Ramboll and ERM (and JPB) Reports are rapidly changing. As noted above, the second round of RFPs in Docket No. 2017-0352 has produced sixteen selected competitive bids for new renewable energy and energy storage projects, which are not included in any of the Reports' assumptions. As HELCO updates its long-term resource plans to incorporate such renewable projects, it is possible that the estimated GHG emissions impact of the Hu Honua Project will also change, as more renewable projects displace existing fossil fuel units.

III.

ORDERS

THE COMMISSION ORDERS:

1. HELCO's request for a waiver from the Competitive Bidding Framework for the Hu Honua Project is denied.

2. As a result of the Commission's denial of HELCO's waiver request, the Commission does not consider and dismisses without prejudice the Amended PPA between HELCO and Hu Honua, as set forth in HELCO's Letter Request.

3. In light of the Commission's rulings above, the Commission finds that the other issues in this proceeding, including the pending motions filed by LOL, are moot.

4. This docket is closed, unless ordered otherwise by the Commission.

DONE at Honolulu, Hawaii JULY 9, 2020.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By James P. Griffin

James P. Griffin, Chair

By Jennifer M. Potter

Jennifer M. Potter, Commissioner

By

Leodoloff R. Asuncion, Jr., Commissioner

APPROVED AS TO FORM:

Mark Kaetsu

Mark Kaetsu
Commission Counsel

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CERTIFICATE OF SERVICE

Pursuant to Order No. 37043, the foregoing order was served on the date it was uploaded to the Public Utilities Commission’s Document Management System and served through the Document Management System’s electronic Distribution List.